Standard for Guardianship Assistance

PURPOSE

The purpose of this standard is to provide direction and guidance to the Child and Family Services (CFS) program regarding guardianship assistance. This standard is intended to achieve statewide consistency in the development and application of CFS core services and shall be implemented in the context of all applicable laws, rules and policies. The standard will also provide a measurement for program accountability.

INTRODUCTION

The Adoption and Safe Families Act of 1997 recognized legal guardianship as one of the options for permanency for children in foster care. Many families make this type of arrangement on their own. It is not uncommon for an aunt/uncle or grandmother/grandfather to approach the court about obtaining legal guardianship of a niece, nephew or grandchild. Legal guardianship does not require a termination of parental rights. The legal guardian is awarded legal custody of a child. At any time the legal guardian(s) or the child's parent wants to terminate the guardianship, they must file a petition and go before a court to have the legal relationship dissolved. Because it is mediated by court review, legal guardianship is considered a positive permanency option when adoption is not possible or practical.

With the Fostering Connections Act of 2008, federal title IV-E funds were made available to fund the care and maintenance by a relative legal guardian of a child who would otherwise remain in foster care. In an arrangement very similar to Adoption Assistance, once a child is discharged from foster care to the custody of a relative legal guardian, the guardian, under certain conditions, may be eligible for a maintenance payment to offset costs for providing a permanent home for the youth. There are, however, some important distinctions between Guardianship and Adoption Assistance that must be kept in mind.

Idaho has had a guardianship assistance program in place since the mid 1990's. It is not restricted to relative guardian placements, but does have the requirement that the parental rights of the child's parents have to be terminated. These guardianships are entirely statefunded assistance agreements and are available on a limited basis.

In this standard, federally funded title IV-E guardianship assistance will be clearly distinguished from state-funded guardianship assistance. The conditions and benefits of each will be detailed. IDAPA rules will also be available to assist with implementation.

TERMS

Legal Guardianship

A judicially created relationship, including one made by a tribal court, between a child and a relative or non-relative. The relationship is intended to be permanent and self-sustaining as evidenced by the transfer to the guardian of the following parental rights with respect to the child:

- a. protection;
- b. education;
- c. care and control of the person;
- d. custody of the person; and
- e. decision making.

Federally-Funded Guardianship Assistance for Relatives

Benefits provided on behalf of children to a relative who assumes legal guardianship of a relative child for whom they have cared as foster parents and for which they have committed to care on a permanent basis. Guardianship assistance is provided for the support of a child who is fourteen (14) years of age or older, who, without guardianship assistance, would remain in the legal custody of the Department of Health and Welfare.

Relative

An individual having a relationship with a child by blood, marriage or adoption. Such individuals include grandparents, siblings and extended family members such as aunts, uncles and cousins.

Relative Guardian

A relative who is appointed a child's legal guardian including a guardianship established by a tribal court.

Sibling

Children related by biological, marital or legal ties (e.g. inclusive of step-siblings, half-siblings and adoptive siblings).

State-Funded Guardianship Assistance

Benefits provided to a related or unrelated legal guardian for the support of a child who meets the eligibility criteria of termination of parental rights and documented unsuccessful efforts to place the child for adoption.

IMPLEMENTING THE STANDARD

Is Legal Guardianship an Appropriate Permanency Goal for a Youth?

Legal guardianship should be considered when:

- Other possibilities for permanency exist, guardianship is not appropriate.
- Efforts to reunify the youth with parents have been exhausted and it remains unsafe for the youth to return home.

- A more permanent option such as adoption is not feasible.
- A youth is not amenable to adoption.
- The youth is living with a relative who is interested in being a permanent resource for the youth.
- The youth and family do not agree with TPR and Adoption.

Caveat Regarding Legal Guardianship

"Both adoption and legal guardianship provide permanent caregivers with many of the same legal rights as birth parents. However, adoption is a lifetime relationship that gives the child all of the legal benefits of a child born into the family. While transfer of permanent legal custody also building family relationship that can last a lifetime, the legal relationship ends when the child turn 18 and is considered an adult. This is one reason why adoption is considered to be a more permanent, lifetime commitment than transfer of permanent legal custody."

From There's No Place Like Home

Thoughts about Guardianship and American Indian/Alaska Native Youth

When a young person is living with a relative or there are other compelling reasons <u>not</u> to terminate parental rights, legal guardianship can be a good permanent solution. A number of tribes do not recognize termination of parental rights and adoption. Tribal Law and Order Codes may make provision for customary adoption which does not require termination of parental rights. A number of tribes routinely intervene in ICWA cases at the point just short of TPR and request transfer of jurisdiction in order to place the youth with relatives or other Indian families.

Currently Idaho Code and IDAPA rule require the termination of parental rights in order for a legal guardian to qualify for state-funded guardianship assistance. The new Title IV-E Guardianship Assistance enables relatives to gain legal custody of children without TPR and to receive the benefits of federally funded guardianship assistance. This practice is much more culturally consistent for American Indian/Alaska Native families.

Alternate Care Plan Amendments

A guardianship amendment to the Alternate Care Plan is required to be completed for all youth being considered for either a state or federally funded Guardianship Assistance. The requirements specified in the ACP amendment must be met and documented in the Case Plan (part I Alternate Care Plan). A copy of the ACP amendment is attached to this standard. Eventually, the ACP amendment will be generated in FOCUS.

Sibling Placement

The youth and any sibling of the eligible youth may be placed in the same relative guardianship arrangement, if the agency and the relative agree on the appropriateness of the arrangement. The guardianship does not need to take effect at the same time for the youth and the sibling. The sibling may already by placed with the relative or follow the youth to the relative placement later, if that is determined to be the best permanency option. The family may receive federally-funded guardianship assistance on behalf of

each sibling placed in the same home. It is important to weigh the benefits of a more permanent option for the younger sibling vs. the benefits of placement in the same home.

Guardianship Assistance Agreement

The Department will work with the prospective legal guardian to negotiate a Guardianship Assistance Agreement including a monthly cash subsidy payment, Medicaid and reimbursement of legal expenses related to the legal guardianship. Those youth receiving Title IV-E Guardianship Assistance must have a monthly case subsidy payment of at least \$1.00 to receive Medicaid. The Guardianship Assistance subsidy will remain in effect regardless of the state of residence of the legal guardian. Medicaid will also be provided in any state for those youth with a Title IV-E Guardianship Assistance Agreement. Legal guardians of youth with a state funded Guardianship Assistance Agreement will need to apply for Medical Assistance in accordance with the state guidelines of any other state of residence where that youth may or may not be eligible to continue to receive Medical Assistance (Medicaid). All youth eligible for federally-funded guardianship assistance qualify to receive Title XX Social Services as specified in the terms of the relative guardian's Title IV-E Guardianship Assistance Agreement.

Guardianship Assistance and Child Support

In cases where parental rights have NOT been terminated and there is a court-ordered child support obligation, the child support should go toward caring for the child. When the child is in foster care, that support is collected by the Department to offset the costs of foster care. In cases where parents are paying child support and a guardian is receiving a state or federal subsidy, the money will be collected by the Department to offset the general fund contribution to the guardianship assistance. However, if the child support exceeds the guardianship assistance payment, the child support can go to the legal guardian. The Department will negotiate the amount of the monthly guardianship subsidy in consideration of the family's receipt of the child support payment.

Guardianship Assistance and TAFI Relative Grants

Relatives do not need to have legal guardianship to care for a relative child and to receive a TAFI relative grant. Regardless of the number of relative children cared for in the same household, the relative grant is limited to the amount provided for one child (approximately \$272 per month). For a child placed in foster care in a relative home a relative can choose between a TAFI relative grant and a foster care payment. Either option requires that the caretaker be licensed because the child is in the Department's legal custody. When there is a Guardianship Assistance Agreement in effect, the relative guardians may not also apply for or receive the TAFI relative grant. As with the child support discussion above, if the relative is receiving a TAFI grant, any child support obligation will be collected by the Department to offset the costs of the relative grant.

Termination of Guardianship Assistance Payments

As outlined in the written agreement, suspension/termination of the agreement will occur in the following circumstances:

A. Upon the conclusion of the terms of the Agreement;

- C. Child reaches the age 18;
- D. Upon the child's death;
- E. Upon the death of the legal guardian(s) of the child (one in a single guardian family and both in a two guardian family);
- F. Cessation of legal responsibility of the legal guardian(s) for the child such as when the guardian(s) make an informed request to be removed as the legal guardian(s), the court removes the legal guardian(s), child marries or enlists in the military (prior to turning 18 years of age); and
- G. If the child no longer resides in the home of the legal guardian(s) and the Department determines that the child is no longer receiving financial support from the legal guardian(s).

Repayment

The legal guardian(s) is responsible for repayment of any funds provided on behalf of the child, which occur after the child's eligibility for guardianship assistance benefits has terminated according to one or more of the above provisions.

Notification of Changes in the Situation of the Legal Guardian(s)

The written agreement requires the legal guardians to notify the Department when:

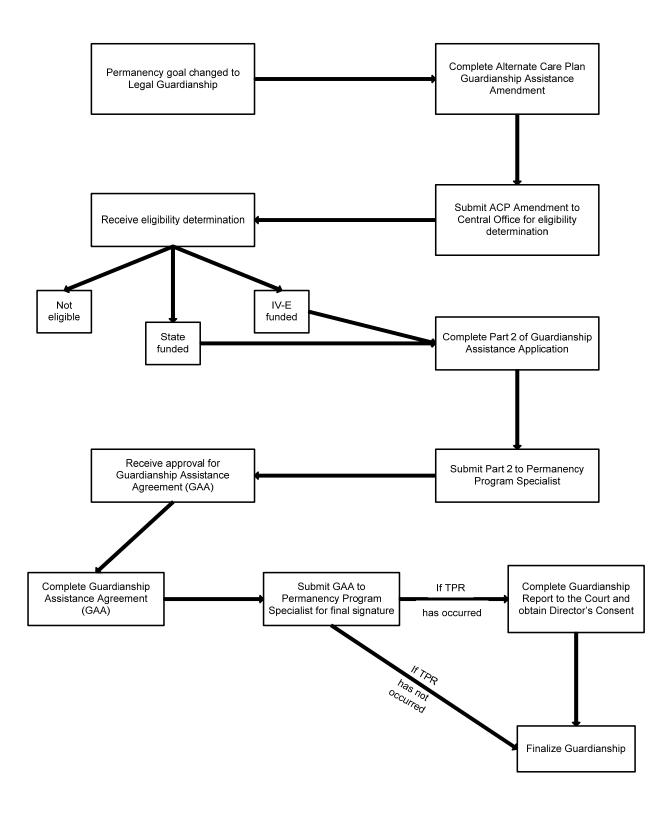
- (1) They are not longer legally responsible for the support of the child;
- (2) They have a change in address; and
- (3) There is a need to change the amount of the payment

Flowchart for processing Guardianship Assistance requests and approvals in detailed on the following page.

Any action taken not consistent with this standard must be pre-approved by the FACS Division Administrator or designee. The action, rationale and approval must be documented in the file.

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Guardianship Assistance Flow Chart



Alternate Care Plan Addendum for Guardianship Assistance

Child's Name			
Child's DOB			
Date child placed with the	prospective		
_	prospective		
legal guardian(s)			
Date of the most recent for	ter care		
license for the prospective	legal		
guardian(s)	- 6		
guaruian(s)			
	Na	me	Date of Criminal History
			Clearance
Prospective Legal			
Cuardian #1			

	Clearance
Prospective Legal	
Guardian #1	
Prospective Legal	
Guardian #2	
Other household adult #1	
Other household adult #2	

(1) Permanency Efforts.

- (a) Date legal guardianship was established as the child's permanency goal:
- (b) Describe the steps taken by the Department to determine that return home or adoption are not appropriate permanency plans for the child:
- (c) Describe the efforts taken by the Department to discuss adoption with the child's foster parent(s)/prospective legal guardian(s). When adoption is not chosen, describe the reason(s) why adoption is not an option:
- (d) Describe the efforts made by the Department to discuss legal guardianship and guardianship assistance with the child's parent(s), or the reason efforts were not made:
- (e) Permanent placement with the prospective legal guardian and receipt of guardianship assistance is in the child's best interest because:

	(f)	The child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child as evidenced by:								
	(g)	The child (if 14 years of age or older) has been consulted regarding the kinship guardianship arrangement. No Yes								
	(h)	If parental rights have been terminated, mark each of the following efforts which have been made to place the child with an adoptive family:								
		Relative Search AdoptUsKids Heart Gallery Disrupted pre-adoptive placement Counseling re: consent Other (specify): Northwest Adoption Exchange Wednesday's Child website/television Wendy's Wonderful Kids or other specialized recruitment								
(2)	Placer	nent.								
	(a)	The prospective legal guardian(s) is related to the child by blood, marriage or adoption as the following:								
		☐ Grandparent ☐ Sibling ☐ Aunt/Uncle ☐ Cousin ☐ None ☐ Other (specify):								
	(b)	Identify all siblings placed in the same guardianship home as the child:								
Full N	lame		Date of Birth	Re	ceive (Gu	ardia	ns	hip	
				As	sistano	:e?				
					Yes		No		Pending	
					Yes		No		Pending	_
					Yes		No		Pending	_
					Yes		No		Pending	_
	(c)	State the reason(s) the	e child is not placed	wit	th all si	bli	ngs (i	f a	pplicable):	
(3)	Legal	Status.								
	(a)	Custody Status								

	No Yes Date:	—————
(b)	Termination Status Have the mother's parental ri No Yes Date: Have the father's parental rig No Yes Date: Is the child in the legal guard No Yes Date:	hts been terminated?
Social Wor	·ker	Date
Supervisor		Date
Being Being Child.	s the practice requirements for Ti	tle IV-E Guardianship Assistance as follows: not appropriate permanency options for the ents for state-funded Guardianship Assistance
	ental rights have been terminated. ere is documentation of unsuccess	ful efforts to place the child for adoption.
	(OR .
Chi	ld does not meet practice requires	ments for Guardianship Assistance.
Permanenc	y Program Specialist (or alternate	Date
Child meets as follows:	s the legal and financial requirem	ents for Title IV-E Guardianship Assistance

	The child was at least fourteen (14) years of age during a consecutive six-mon period of time while residing with the prospective relative guardian(s); and	th
	The child was removed from home pursuant to a voluntary placement agreement as the result of a judicial determination that continuation in the home would contrary to the welfare of the child; and	
	During the consecutive six-month period of time that the child resided with the relative foster parent(s), the home was fully licensed or approved and the child was eligible for IV-E foster care benefits.	
	OR	
	The child is the sibling of a child who is eligible for Title IV-E Guardianship Assistance and is <u>living with or</u> placed with the same relative under a legal guardianship arrangement.	
	OR	
	Child is not eligible for Guardianship Assistance.	
Resou	arce Development Unit Date	te